

# ARKANSAS COURT OF APPEALS

DIVISION I  
No. CACR 08-538

GREGORY V. JACKSON

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

**Opinion Delivered** OCTOBER 29, 2008

APPEAL FROM THE SEBASTIAN  
COUNTY CIRCUIT COURT,  
FORT SMITH DISTRICT  
[NOS. CR-2006-1512, CR-2007-154]

HONORABLE J. MICHAEL  
FITZHUGH, JUDGE

AFFIRMED

**JOHN B. ROBBINS, Judge**

Appellant Gregory V. Jackson pleaded guilty to possession of a counterfeit substance with intent to deliver and second-offense possession of marijuana. On September 11, 2007, a judgment was entered placing Mr. Jackson on a ten-year suspended imposition of sentence and a six-year suspended imposition of sentence. On November 26, 2007, the State filed a petition to revoke the suspended sentences on the basis that Mr. Jackson possessed marijuana. An amended petition to revoke was filed on December 17, 2007, wherein the State alleged that Mr. Jackson committed additional violations by fleeing, recklessly driving, driving on a suspended license, and refusing to submit to arrest.

After a revocation hearing held January 23, 2008, the trial court revoked the suspended impositions of sentences and sentenced Mr. Jackson to concurrent prison terms of ten and six years. The only issue raised by Mr. Jackson in this appeal is that the trial court

abused its discretion in denying his motion for a continuance made at the beginning of the revocation hearing. We find no error and affirm.

At the outset of the revocation hearing, Mr. Jackson addressed the trial court and stated:

Your Honor, I made three appointments to see the public defender and all three appointments were made, they kept putting it off and I got to see them yesterday. I wouldn't even have known that I had to be in court today if I wouldn't have made the appointment yesterday. And like I was telling them, I am not ready. I tried to make an appointment to get this postponed so I can have time to get me an attorney, you know, but they offered me six years and this is the first offer I have got. I just got that when I come to court today, you know. If there is any way that you can give me time to get me an attorney?

One of appellant's two appointed attorneys then stated, "I am going to ask for a continuance for a week for him to have some time to hire his own attorney." The trial court denied appellant's motion for a continuance, and the State proceeded with its case.

Officer Daniel Kasper of the Fort Smith Police Department was patrolling on December 14, 2007. He testified that he observed a vehicle being driven by Mr. Jackson accelerate to about fifty-five miles per hour on a street where the speed limit was thirty-five. Officer Kasper initiated his emergency lights and siren, but Mr. Jackson continued to speed away. Mr. Jackson fled from the officer for several blocks, during which he drove through a red light and a stop sign. After Mr. Jackson's car skidded to a stop, he exited and fled on foot. Eventually Mr. Jackson stopped running, but he refused to comply with Officer Kasper's directive to get on the ground, and he resisted being arrested. Officer Kasper was eventually able to physically subdue appellant and handcuff him. After arresting appellant and

placing him in the patrol car, Officer Kasper discovered that appellant's driver's license was suspended.

Officer Gus Moore testified that he stopped a car being driven by Mr. Jackson on November 2, 2007, because the car had no license plate. Upon making contact with Mr. Jackson, Officer Moore discovered that he had no driver's license and had three outstanding arrest warrants. After arresting Mr. Jackson, Officer Moore searched him and found a baggie containing suspected marijuana. In Mr. Jackson's testimony, he admitted to possessing illegal drugs that day and stated that he needs help for his addiction to marijuana.

On appeal, Mr. Jackson argues that the trial court abused its discretion in denying his motion for continuance. Mr. Jackson cites *Caswell v. State*, 63 Ark. App. 59, 973 S.W.2d 832 (1998), where we set forth the following considerations:

It is clear that the question of a continuance is within the discretion of the trial judge and not every denial of a request for more time violates due process or Constitutional mandates. The burden is on the appellant to show that there has been an abuse of discretion. The right to choose counsel may not be manipulated or subverted to obstruct the orderly procedures of the Court or to interfere with the fair, efficient and effective administration of justice. In each such situation the Court must look at the particular circumstances of the case at bar and the issue must be decided on a case by case basis.

....

Although a defendant must be offered a reasonable opportunity to obtain competent counsel, once competent counsel is obtained, any request for a change must be considered in the context of the public's interest in a reasonably prompt and competent dispensation of justice. If such a change would require the postponement of trial because of inadequate time for a new attorney to properly prepare a defendant's case, in denying or granting the change, *the court may consider such factors as the reasons for the change, whether other counsel has already been identified, whether the defendant has acted diligently in seeking the change, and whether the denial is likely to result in any prejudice to defendant.*

*Id.* at 65-66, 973 S.W.2d at 835-36 (citations omitted)(emphasis in original). Other factors to be considered in deciding whether to grant a continuance are the length of the requested delay, whether the request is for legitimate reasons, and whether the defendant contributed to the circumstances giving rise to the request. See *Thorne v. State*, 269 Ark. 556, 601 S.W.2d 886 (1980).

Applying the above factors to the instant case, Mr. Jackson contends that he should have been granted a one-week continuance to prepare for the hearing or obtain different counsel. He asserts that he had no notice of the revocation hearing until the day before it was scheduled, which was also the first day that he was able to meet with his appointed attorney. Mr. Jackson submits that he was unprepared for the hearing through no fault of his own, but rather the fault of his counsel. Mr. Jackson argues that to not grant a short continuance under these circumstances constituted an abuse of discretion that violated his right to due process.

We hold that there was no abuse of the trial court's discretion in denying appellant's motion for continuance. The record shows that on December 19, 2007, Mr. Jackson completed and signed a certificate of indigency and a public defender was appointed to represent him that day. On December 21, 2007, notice of the January 23, 2008, revocation hearing was mailed to the public defender. At the hearing, appellant's lawyers made no indication that they were unprepared to represent him, but rather asked for a one-week continuance pursuant to Mr. Jackson's desire to obtain alternate counsel. Mr. Jackson had evidently made no effort to hire private counsel sooner, and none was identified at the

hearing. Mr. Jackson's counsel stood ready to represent him and was willing to go forward with the hearing. Under these circumstances, Mr. Jackson was not entitled to a continuance.

Moreover, an appellant has the burden not only to show that the denial of a continuance was an abuse of discretion, but he must also demonstrate prejudice. *See Kilgore v. State*, 313 Ark. 198, 852 S.W.2d 810 (1993). In the present case Mr. Jackson makes no suggestion as to how a continuance might have changed the outcome of this case. As previously stated, he was represented by counsel at the hearing, and his lawyers cross-examined the State's witnesses. The State's witnesses provided testimony that Mr. Jackson committed numerous offenses that violated his conditions. And Mr. Jackson himself admitted to possessing marijuana, which was alone sufficient to revoke his suspended sentences. The fact that he cannot demonstrate prejudice is another reason why he cannot prevail in this appeal.

Affirmed.

MARSHALL and VAUGHT, JJ., agree.